

REMARKS

Claims 11 and 12 are pending. Support for the amendments to claims 11 and 12 may be found at least in original claim 9 and in paragraphs [0026] and [0033] of the published application. No new matter has been introduced by way of these amendments.

I. *The rejection under 35 U.S.C. § 103(a) should be withdrawn*

Claims 11 and 12 are pending. Claims 11 and 12 stand rejected over Published U.S. Appl. No. 2002/0058075 to Jones in view of U.S. Patent No. 5,399,348 to Schwabe for the reasons set forth on pages 3 and 4 of the Office Action dated June 23, 2009. Specifically, the Patent Office maintains that ¶[0177] of Jones discloses using Ginkgo biloba extract to promote muscle mass to the detriment of fatty mass in warm-blooded animals (e.g., humans), thereby treating obesity. Although the Patent Office admits that Jones does not teach the specific weight percentage amounts and/or ppm of flavone glycosides, ginkgolides, bilobalide, alkylphenol, and proanthocyanidines recited in the claims, it suggests that Schwabe provides these weight percentage amounts, and that it would have been obvious to combine the teachings of Jones and Schwabe.

Applicant respectfully traverses the rejection. Unlike the claimed invention, which contains a Ginkgo biloba extract as the active ingredient, Jones discloses using Ginkgo biloba extract, not as an active ingredient, but instead combined with various other dried plant extracts as active ingredients, including *Citrus aurantium*, *Puallinia cupana*, and *Panax ginseng*. Moreover, Jones teaches that it is the materials derived from Citrus plants (e.g., alkaloids such as synephrine, hordenine, and octopamine)—and not the Ginkgo biloba extract itself—that actually effect weight loss. *See, e.g.*, ¶¶ [0160] (“[M]aterial from Citrus species is given to humans by the oral route, either concurrently with caloric restriction or in the absence of caloric restriction, for the purpose of controlling body weight.”) and [0164]-[0165] (“In this context, the active agents are deemed to be any one or more of synephrine, hordenine, octopamine, tyramine and N-methyltyramine, whereby the sufficient amount may be any one singly, or a combination of the agents that together provide a sufficient amount. Because levels of the said agents are often relatively low and variable, and also because in their natural state the agents are associated with parts of the plant that are unpalatable, it may be difficult to achieve an intake of Citrus material in a volume sufficient to provide a suitable amount of the agents as defined above.”) Nowhere does Jones state, suggest or hint that Ginkgo biloba extract alone would have the same effect.

Finally, there is no reason that a person of ordinary skill in the art would combine the teachings of Jones and Schwabe with the expectation of successfully treating obesity, nor has the Patent Office provided any such reason. After all, Schwabe teaches using Ginkgo extract to treat entirely different conditions (*e.g.*, to stimulate the circulation of blood, prevent ischemic disorders, and inhibit platelet aggregations). Applicant therefore respectfully requests that the obviousness rejection be withdrawn.

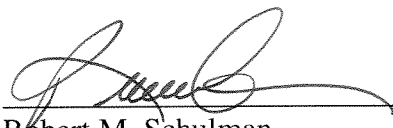
II. *The double patenting rejections should be held in abeyance*

Claim 12 stands rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,138,148 to Christen. Applicant submits that this ground of rejection may be overcome by filing of a terminal disclaimer. Applicant is prepared to file a suitable terminal disclaimer once the claims in the instant application have been agreed to be otherwise allowable.

In view of the foregoing, it is believed that this application is now in condition for allowance, and a Notice thereof is respectfully requested. If the Examiner feels that issues may be resolved via a telephonic conference, Applicant's undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 955-1500. All correspondence should continue to be directed to our address given below.

Respectfully submitted,
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Dated: April 7, 2010

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